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Worldwide Telecommunications

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Federal Communications Commission
Office of Secretary

Chairman Reed Hundt
Commissioner James H. Quello
Commissioner Rachelle Chong
Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt and Commissioners:

On April 24, 1997, the Department of Justice (DOJ) and the National Telecommunications and Information Administration (NTIA) separately filed *ex parte* letters expressing their individual views on the Commission's Notice of Proposed Rulemaking in Access Charge Reform, CC Docket No. 96-262.

LCI International (LCI) fully supports both agencies on a large number of issues raised in their proposals and urges their careful consideration by the Commission as it deliberates on this historic issue.

Specifically, LCI strongly supports NTIA on the following issues:

- The immediate reduction in interstate access rates.
- The restructuring of access rates to ensure that underlying costs are recovered in an economically rational fashion.
- The withholdoing of broadened LEC access pricing flexibility until the interconnection and unbundling agreements satisfy Congress' intent as set forth in the Telecommunications Act of 1996 (Act).

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With regard to the proposal set forth by the DOJ, LCI expresses its strong support for the following points:

- The fundamental incompatibility of the implicit subsidies contained in the current access charge mechanism with cost- based access pricing (required by the Telecommunications Act) and competition (DOJ at pp. 3-6).

- The determination within the ongoing Price Cap proceeding whether Price Caps allow ILECs to earn excessive returns, the identification of any monies stemming from LEC inefficiencies or excess profits, and the adjustment of Price Caps accordingly -- specifically addressing the appropriate productivity offset and LEC cost of capital (DOJ at pp. 10,15-16).

- The completion of the FCC's ongoing Price Cap proceeding, and the application of appropriate Price Cap adjustments lowering rate levels, prior to the implementation of any access charge reform (DOJ at p. 9).

- The identification and targeting for reduction and removal of any implicit subsidies remaining in the access charge system subsequent to the Commission's implementation of explicit Universal Service recovery mechanisms (DOJ at p. 9).

- The identification of any possible costs presently recovered through interstate access charges that should be allocated to the intrastate jurisdiction, and the undertaking to reform the separations process (DOJ at p. 9).

- The use of traffic sensitive rate elements to recover traffic sensitive costs, and the use of non-traffic sensitive (NTS) rate elements to recover NTS costs, specifically the NTS costs associated both with the common line and a substantial portion of local switching (DOJ at pp. 11, 13, 14).

While LCI supports NTIA on the aforementioned issues, LCI believes it is important to improve other aspects of the NTIA proposal:

- Local Transport Rate Structure: A decision to eliminate the optional Unitary transport rate structure would unfairly and severely impact small carriers. The current interim rules offering both Unitary and Partitioned options should be adopted on a permanent basis.

- Tandem Switching Rate: Any increase in the tandem switching rate would cause differential harm to small carriers and create a barrier to new entrants. Small IXCs pay the tandem switching rate for more than 90% of their traffic, while the three largest IXCs pay this element for less than 15% of their traffic. The tandem switching rate should not be increased.

- Downward Pricing Flexibility and Section 271(c)(2) of the Act: A state-approved interconnection agreement in no way demonstrates that a local exchange access market is competitive and does not mitigate an ILEC's ability to create volume or other discount plans tailored to favor unfairly either its own retail subsidiary or its largest existing access customer, while still lowering rates. Such pricing flexibility should not be given until the local exchange access market is fully competitive.

- Rates for Terminating Access: With the pending re-entry of the Regional Bell Operating Companies into Long Distance, terminating access rate levels in excess of cost result in direct payment of subsidies from the competitive originating carrier to the ILEC. Terminating access rates should immediately be reduced to TELRIC levels.

- Imputation of Access Charges by ILECs: The constraints of imputation fail to overcome the anti-competitive financial benefits that accrue to an ILEC which pays itself for access priced in excess of forward-looking cost. Only the reduction of overall access charges to TELRIC mitigates this ILEC advantage.

With regard to the DOJ proposal, LCI notes an internal inconsistency. The proposal accurately describes the extremely limited competitive market today for access, and the difficulties in developing that market through unbundled network elements or otherwise, given the LEC's entrenched economic base and current monopoly power (DOJ at pp. 8, 18-20). Inexplicably, DOJ then goes on to support a market-based approach toward access charge reform until a record is developed which would support access charges brought to cost. Given that no market in fact exists today for access, and will not for some considerable time, it is important for the Commission to recognize that reality and act immediately to bring access charges down, as the DOJ in many portions of its filing correctly and helpfully suggests.

In this regard, LCI also would point out the helpful suggestions contained in the April 16, 1997 filing by the Coalition for Access and Universal Service Reform. In many respects, that filing and the DOJ's filing are completely compatible. The Coalition, like the DOJ, recognizes the need for a record to support bringing access to true economic cost, and like the DOJ, recommends that steps be taken to build that record in support of any Commission final decision.

In the interim, however, the Coalition suggests two important steps which can be taken on the record currently before the Commission. Both are fully supportable on appeal. These steps are:

In Year 1, acting in Price Cap Docket, reduce access charges significantly. The DOJ and NTIA, as well as the full Price Cap Docket before the Commission, support this action.

In Year 2, bring the TIC to 20% of its current level. This would be supported on appeal because of the remand of the Commission's decision in the TIC docket for lack of evidence to support the TIC as it is currently structured. *See Competitive Telecommunications Association v. FCC*, 87 F.3d 522 (D.C. Cir. 1996). This remand has not yet been acted upon by the Commission. Coupled with Bell Atlantic/NYNEX's support for reducing the TIC to 20%, the Court of Appeals decision provides full record support on appeal for acting immediately to reduce the TIC. (Indeed, comments in the TIC docket on remand before the Commission provide full record support for complete elimination of the TIC.)

In Year 3, after the Eighth Circuit has ruled, the Coalition and the DOJ alike suggest that the Commission can take action on the record it acts to develop in the interim to bring access charges to true economic cost, as the Telecommunications Act requires.

These principles are sound, and would give the Commission full support on appeal for its actions now, while establishing the record, as the DOJ suggests, for action bring access charges to economic cost.

LCI emphasizes again the historic undertaking upon which the Commission is engaged, and encourages the Commission to consider carefully these points in the context of its decision on access charges.

Sincerely,

H. Brian Thompson
Chairman & Chief Executive Officer

HBT:slg
cc: The Honorable Larry Irving, Department of Commerce
The Honorable Joel I. Klein, Department of Justice